[redacted]

# INDEX.


| | Page. |
|---|---|
| STATEMENT | 1–8 |
| Interpretation of indictment by lower court | 1–2 |
| Statutes involved | 3–5 |
| Regulation of department | 6 |
| Assignment of errors | 6–8 |
| 1, 2. Error in holding object of conspiracy charged in 1st count lawful | 6–7 |
| 3. Error in holding regulation inconsistent with statute | 7 |
| 4. Error in holding 2nd count did not state an unlawful conspiracy | 7–8 |
| ARGUMENT | 8–22 |
| Jurisdiction of the court | 8–9 |
| Lower court's interpretation of indictment conclusive here | 8 |
| Indictment based on Secs. 37, 206, 208 of Criminal Code, and act of March 3, 1883 (22 Stat., 600) | 8 |
| Four questions arise from decision on demurrer, each giving jurisdiction here | 9 |
| THE MERITS: Count 1. | |
| I. | |
| "Gross receipts" means lawful gross receipts | 9–11 |
| Other view would permit profit by prohibited and unlawful act | 11–12 |
| Policy plainly indicated by other statutes | 12 |
| This construction long observed by department | 12–13 |
| Principle to govern in interpreting "gross receipts" | 13–14 |
| II. | |
| Statute authorizes regulation | 14–18 |
| View of lower court | 14 |
| View opposed to that of this court in Lewis Publishing Company case | 14–16 |

THE MERITS—Continued.

Page.

And Antikamnia case ..... 16–17
Regulation aids statute ..... 17–18
Reasons ..... 17–18

III.

Indictment states crime independent of regulation ..... 19–21
Interpretation is of a charge dual in character; (1) violating law, (2) violating regulation ..... 19
Under (1) a fraud on the United States charged .. 19–21
Newton case applied ..... 21

Count 2.

IV.

Stands or falls with first count ..... 22

V.

CONCLUSION ..... 22

## CASES CITED.


| | Page. |
|---|---|
| *Campbell* v. *United States*, 107 U. S. 407 | 16 |
| *Crain* v. *United States*, 162 U. S. 625, 636 | 19 |
| *German Alliance Ins. Co.* v. *Van Cleave*, 61 N. E. 94 | 14 |
| *Haas* v. *Henkel*, 216 U. S. 462 | 16 |
| *Lewis Publishing Co.* v. *Wyman*, 182 Fed. 13, 16 | 13, 14, 15, 16 |
| *McKee* v. *United States*, 164 U. S. 287, 293 | 13, 14 |
| *Patton* v. *United States*, 226 U. S. 525, 535 | 9 |
| *People* v. *Miller*, 70 N. E. 10 | 14 |
| *State* v. *Fleming*, 97 N. W. 1069 | 14 |
| *State* v. *Illinois Central R. R. Co.*, 92 N. E. 814, 847 | 14 |
| *State* v. *Telephone Co.*, 120 N. W. 534 | 14 |
| *United States* v. *Antikamnia Chemical Co.*, No. 118, October term | 16, 17 |
| *United States* v. *Biggs*, 211 U. S. 518 | 8 |
| *United States* v. *Johnston*, 124 U. S. 236, 253 | 12 |
| *United States* v. *Keitel*, 211 U. S. 370, 397 | 8, 9 |
| *United States* v. *Newton*, 48 Fed. 218 | 19, 20, 21 |
| *United States* v. *Stevenson*, 215 U. S. 190, 195 | 19 |
| *United States* v. *Sutton*, 215 U. S. 294 | 9 |

# In the Supreme Court of the United States.

OCTOBER TERM, 1913.

THE UNITED STATES, PLAINTIFF IN ERROR,
*v.*
HAROLD A. FOSTER, FRANK E. WINCHELL, WILLIAM S. EDWARDS, and HARRY H. PLATT. } No. 838.

*IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.*

## STATEMENT.

This writ of error was sued out under the Criminal Appeals Act of March 2, 1907 (34 Stat. 1246), to review a decision of the District Court sustaining a demurrer to the indictment, and involving a construction of the statutes upon which the indictment was based.

The District Court thus interpreted and summarized the allegations of the indictment (R., 11 and 14):

> The first count of this indictment charges the defendants with having conspired to defraud the United States. The alleged object of the conspiracy was to obtain for the defendant Foster a larger salary as postmaster at North Brookfield than he was by law and by the regulations of the Post Office Department entitled to. This object was to be accom-

plished, according to the allegations of the indictment, in the following manner: One of the other defendants, Winchell, was to buy at the North Brookfield post office large quantities of stamps, which he was to send to the other two defendants, Edwards and Platt, at New York City, for use there. Foster was to include the proceeds of these sales in his returns of the gross receipts of the North Brookfield post office to the Auditor for the Post Office Department, but was not to report the sales to the First Assistant Postmaster General as unusual ones, to the end that the receipts from such sales should be deemed to be part of the gross receipts of said post office, and, consequently, should be made in part the basis upon which Foster's salary was determined. It is alleged that the regulations of the department required large or unusual sales for use outside of the district to be reported by the postmaster to the First Assistant Postmaster General, and further provided that such sales should not be included by the officials of the Post Office Department in the "gross receipts" upon which the postmaster's salary was fixed. * * *

The second count charges a conspiracy between the same defendants to commit "the offence denounced by section 206 of the Criminal Code." That section provides, inter alia, that whoever being a postmaster shall, for the purpose of fraudulently increasing his compensation, make a false return, statement, or account to any officer of the United States shall be punished.

The court held, in substance, that the indictment did not charge either a conspiracy to defraud the United States or to make a false return, because the object of each conspiracy was to obtain only what defendant Foster was legally entitled to, namely, an increase of salary *based upon the "gross receipts" of his office.* (R., 11 et seq.)

**STATUTES INVOLVED.**

Sections 37, 206, and 208 of the Criminal Code read as follows:

> SEC. 37. If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or both.
>
> SEC. 206. Whoever, being a postmaster or other person employed in any branch of the postal service, *shall make*, or assist in making, or *cause to be made*, a *false return, statement, or account to any officer of the United States*, or shall make, assist in making, or cause to be made, a false entry in any record, book, or account, required by law or the rules or regulations of the Post Office Department to be kept in respect of the business or operations of any post office or other branch of the postal service, for the purpose of fraudulently increasing his compensation or the compensation of the postmaster or any employee in a

post office; or whoever, being a postmaster or other person employed in any post office or station thereof, shall induce, or attempt to induce, for the purpose of increasing the emoluments or compensation of his office, any person to deposit mail matter in, or forward in any manner for mailing at the office where such postmaster or other person is employed, knowing such matter to be properly mailable at another post office, shall be fined not more than five hundred dollars, or imprisoned not more than two years, or both.

SEC. 208. Whoever, being a postmaster or other person employed in any branch of the postal service, and being intrusted with the sale or custody of postage stamps, stamped envelopes, or postal cards, shall * * * sell or dispose of, or cause to be sold or disposed of, postage stamps, stamped envelopes, or postal cards at *any point or place outside of the delivery of the office* where such postmaster or other person is employed; or *induce* or *attempt* to *induce, for the purpose of increasing the emoluments or compensation of such postmaster,* or the emoluments or compensation of any other person employed in such post office or any station thereof, or the allowances or facilities provided therefor, *any person* to *purchase* at *such post office or any station thereof,* or from any employee of such post office, postage stamps, stamped envelopes, or postal cards; *or sell or dispose of* postage stamps, stamped envelopes, or postal cards, *otherwise than as provided by law or the regulations of the Post Office Department,* shall be fined not more than

five hundred dollars, or imprisoned not more than one year, or both.

The act of March 3, 1883, entitled "An act to, adjust the salaries of postmasters" (22 Stat. 600), provides:

> That the respective compensation of postmasters of the first, second, and third classes shall be annual salaries, assigned in even hundreds of dollars, and payable in quarterly payments, *to be ascertained and fixed by the Postmaster General from their respective quarterly returns* to the Auditor of the Treasury for the Post Office Department, or copies or duplicates thereof, to be forwarded to the First Assistant Postmaster General, for four quarters immediately preceding the adjustment, at the *following rates*, namely:
>
> FIRST CLASS.
>
> *Gross receipts*, forty thousand dollars, and not exceeding forty-five thousand dollars, salary, three thousand dollars * * * etc.

Section 161 of the Revised Statutes reads as follows:

> The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.

32917—14—2

The regulation of the Postmaster General in force at the time of the commission of the overt acts set forth in the indictment at bar, reads as follows:

> 2. In determining the "gross receipts" upon which the salary of a postmaster shall be based, stamps, stamped envelopes, and postal cards, sold in large or unusual quantities to any person to be used in mailing matter at other post offices will not be included, whether the sale be made with or without solicitation by the postmaster. When postage stamps or stamped paper are sold in large or unusual quantities, it shall be the duty of the postmaster to inquire into and ascertain whether or not the purchaser intends to use such postage stamps or stamped paper for mailing matter in his office, or other offices; and the fact shall be clearly indicated in his monthly stock report on Form 3240 to the Third Assistant Postmaster General. Upon evidence of neglect of the postmaster to ascertain and report such facts, he will be required to refund the amount of the excess salary and allowances he may have received on account of such sales. (Sec. 255, Supplement to Postal Laws and Regulations, ed. March 4, 1907.)

**ASSIGNMENTS OF ERROR RELIED ON.** (R. 15.)

1. Said court erred in holding that the object of the conspiracy, as alleged in said first count of the indictment, was a lawful one, to wit, to increase the gross receipts of the post office at North Brookfield, of which the defendant Foster was postmaster, by the purchase of postage stamps in large and unusual quantities, to be used by other defendants upon mail

matter to be deposited in the post office at New York, in the State of New York, or at some other than said North Brookfield post office.

2. Said court should have held that the object of the conspiracy alleged in the first count of said indictment was fraudulent, and that said count well alleged a conspiracy to defraud the United States in view of the provisions of section 208 of said Criminal Code, providing that "Whoever being a postmaster shall * * * induce, or attempt to induce, for the purpose of increasing the emoluments or compensation of such postmaster, any person to purchase at such post office * * * postage stamps * * * or sell or dispose of postage stamps, stamped envelopes, or postal cards, or otherwise than as provided by law, or the regulations of the Post Office Department, shall be punished."

3. Said court erred in its construction of the provisions of section 5 of the act of July 12, 1876, 2 U. S. Compiled Statutes, 2609, and of the act of March 3, 1883, 2 U. S. Compiled Statutes, 2619, entitled "An act to adjust the salaries of postmasters," and of section 161 of the Revised Statutes of the United States, and in holding that the regulations of the Postmaster General defining gross receipts of second-class post offices are inconsistent with the provisions of said statutes as appears from the opinion of the court upon demurrer, filed October 2, 1913.

4. Said court erred in holding that the second count of said indictment did not well allege a con-

spiracy by the defendants in violation of section 37 of said Criminal Code, to commit an offense against the United States, denounced by section 206 of said Criminal Code.

## ARGUMENT.

### THIS COURT HAS JURISDICTION.

The lower court said of the first count:

> The alleged object of the conspiracy was to obtain for the defendant Foster a larger salary as postmaster * * * than he was by law and regulations of the Post Office Department entitled to.

The law and regulations here referred to by the court must necessarily be any and all laws and regulations dealing with the salary a postmaster may lawfully receive.

As to the second count the court said:

> The second count charges a conspiracy between the same defendants to commit "the offence denounced by section 206 of the Criminal Code."

For the purpose of this review the lower court's interpretation of the indictment is conclusive (*United States* v. *Keitel*, 211 U. S. 370; *United States* v. *Biggs*, ib. 518).

The indictment, though primarily founded on section 37 of the Criminal Code, depends ultimately upon section 208 as to the first count, and section 206 as to the second count, and on the act of March 3, 1883 (22 Stat. 600). The following questions were

before the court, and involved the construction of these statutes:

1. Whether "gross receipts" means actual receipts whether lawful or not, or means gross receipts from lawful sales only.

2. Whether sales made as charged are in violation of section 208, as being unlawfully "induced" sales.

3. Whether such sales are in violation of section 208, as having been unlawfully made outside of the post-office delivery, on the theory that the plan contemplated an ultimate sale to the user.

4. While there was no question of the construction of the regulation, but only as to its validity, yet its validity depended upon the construction of the statutes.

In view of the foregoing this court has jurisdiction to review the decision of the lower court.

*Patton* v. *United States*, 226 U. S. 525, 535.
*United States* v. *Sutton*, 215 U. S. 294.
*United States* v. *Keitel*, 211 U. S. 397.

## ON THE MERITS.

### COUNT ONE.

### I.

**The term "gross receipts" means receipts accruing from sales made pursuant to law and the regulations of the Post Office Department.**

The court below said with respect to the statutes drawn in question:

> The effect of the various statutes taken together is to make the salaries depend upon

> the gross receipts, and to prevent such receipts (and consequent salaries) from being increased by improper methods. * * *

The term "gross receipts" first appears in the act of March 3, 1883 (supra) as a basis for fixing the compensation of postmasters. At that time the act of June 17, 1878 (20 Stat. 140, 141), was in force, which, among other things, prohibited postmasters from using stamps in the payment of debts, or in the purchase of merchandise or other salable articles. To these prohibitions section 208 of the Criminal Code of the United States added others, to wit, the selling or disposing or *causing* the selling or disposing of stamps at any point or place outside the delivery of the office, or the *inducing* or *attempting* to *induce* any person to *purchase* stamps for the purpose of increasing the compensation or emoluments of the postmaster, or selling stamps otherwise than as provided by law or the regulations of the Post Office Department.

The acts of the defendants as set forth in the first count of the indictment are such as fairly fall within the prohibitions against inducing the sale of stamps for the purpose of increasing the emoluments or compensation of the postmaster, and disposing or causing to be disposed of stamps outside the delivery of the office.

We have then, under the ruling of the court below, the proposition that because Congress has provided that compensation shall be based upon "gross receipts," and such term is unambiguous, therefore

the postmaster was entitled to compensation based thereon notwithstanding it was shown that such gross receipts covered moneys derived from sales which he was prohibited by law from making. The statement of the proposition works its destruction. The contention that the term "gross receipts" is a "definite and unambiguous expression" falls short of establishing that its scope is not delimited. The term "gross receipts" can not properly be construed otherwise than to mean gross receipts derived from authorized acts. No other intention can be imputed to Congress. Therefore where a postmaster does acts directed towards increasing his compensation, and Congress has not only prohibited him from doing those acts, but has provided punishment therefor, it must be conceded that if he succeeds in obtaining compensation as a result of such acts, he to that extent has defrauded the United States. Considering all the statutes covering the postal system, as in *pari materia*, which must be done, it is clear that the Government has never consented to pay compensation for the performance of prohibited acts.

To state it briefly, "gross receipts" mean nothing more than lawful gross receipts; not those derived from illegal acts. And it was not only within the power but it was the duty of the Postmaster General to provide by regulation that postmasters should report such unusual sales as those charged in the indictment at bar, and that they should not be considered in fixing compensation. The adoption of

a different rule would place it within the power of postmasters to fix their own compensation.

The ordinary rule would seem to be that a person can claim compensation only in consideration of the performance of duties falling within the scope of his employment, and he can not compel compensation for the voluntary performance of prohibited acts never acquiesced in. The present case does not constitute an exception to the well-established rule that one is not to be made a debtor without his assent. Indeed, under section 3679 R. S., as amended by section 3 of the act of February 27, 1906 (34 Stat. 48), Congress has expressed its policy in this regard by prohibiting Government officers from accepting voluntary service or personal service in excess of that authorized by law. The acts set forth in the indictment are, so far as the postmaster, one of the defendants, is concerned, both voluntary and in excess of law, and the burden rests upon the defendants to show that a claim for compensation could be bedded upon such acts.

The construction of the term "gross receipts" here contended for by the Government is that which has uniformly been followed by the Post Office Department, as shown by its regulation hereinbefore set forth, which has been in force a long period of time, as observed by the court below. (R., 13.) Therefore, under the ruling laid down by this court in *United States* v. *Johnston* (124 U. S. 236, 253), such departmental construction "should not be disregarded or

overturned except for cogent reasons and unless it be clear that such construction is erroneous."

A case quite in point is that of *Lewis Publishing Co.* v. *Wyman* (182 Fed. 13, 16; C. C. A. 8th Cir.), which involved the right of the Postmaster General to limit the number of sample copies which might be sent by the publisher under his "second-class" mailing privilege. The statute drawn in question, March 3, 1885 (23 Stat. 387), provided, inter alia, that second-class matter "including *sample copies*," should be entitled to transmission through the mails at the rate of one cent a pound. The contention was made that when a publisher has been accorded the second-class privilege, there is no limit to the number of sample copies that might be sent. Such contention was repudiated by the court, which upheld the power of the Postmaster General to limit the number of such sample copies.

The case at bar can not be distinguished in principle.

The following language of the court in *McKee* v. *United States* (164 U. S. 287, 293), is pertinent here:

> * * * Under such circumstances it is not only the right but it is the plain duty of the court to limit by a proper construction the otherwise boundless application of the general language used in the statute. As was said by Mr. Chief Justice Taney: "It is undoubtedly the duty of the court to ascertain the meaning of the legislature from the words used in the statute, and the subject matter to

> which it relates; and to restrain its operation within narrower limits than its words import if the court are satisfied that the literal meaning of its language would extend to cases which the legislature never designed to embrace in it." *Brewer* v. *Blougher*, 14 Pet. 178, at 198; *Petri* v. *Commercial National Bank of Chicago*, 142 U. S. 644, 650.

The following cases furnish additional illustrations of the manner in which courts have limited the scope of the expression "gross receipts," and words of similar tenor:

> *State* v. *Illinois Cent. R. R. Co.* (92 N. E. 814, 847); *German Alliance Ins. Co.* v. *Van Cleave* (61 N. E. 94); *People* v. *Miller* (70 N. E. 10); *State* v. *Fleming* (97 N. W. 1063, 1069); *State* v. *Telephone Co.* (120 N. W. 534).

## II.

**The regulations of the Postmaster General here drawn in question are valid and not in excess of law.**

The court below strikes down the regulation of the Postmaster General, now in issue, because as it construes the statutes, "gross receipts" necessarily cover all the receipts of the office, including those accruing from unlawful as well as lawful sales, and therefore it was not within the power of the Postmaster General to place any limit upon the scope of the term.

Here again the case of *Lewis Publishing Co.* v. *Wyman* (182 Fed., 13, 16), *supra*, is apposite. As

hereinbefore pointed out, the statute in that case authorized the sending of "sample copies," without restriction so far as the particular statute was concerned, by publishers holding a second-class mailing privilege, but nevertheless the Postmaster General adopted a regulation limiting the sample copies that might be sent to a number equal to that of the legitimate subscribers. In upholding this exercise of power, the court said:

> * * * It is contended that when a publisher has once been accorded the second-class privilege there is, as long as he retains it, no limit to the number of sample copies he can send through the mails at the pound rate. This contention is based on the language of the act of March 3, 1885, which prescribes a postage rate of one cent per pound or fraction thereof for publications of the second class "including sample copies." Act March 3, 1885, c. 342, 23 Stat. 387 (U. S. Comp. St. 1901, p. 2669). The act does not specifically place a limit on the number of sample copies, and it is claimed the department can therefore impose none. The words "including sample copies" were also in act March 3, 1879, c. 180, § 11, 20 Stat. 359. We think that under the authority conferred by Congress (Rev. St., § 161 [U. S. Comp. St. 1901, p. 80]) upon the head of the department to prescribe regulations not inconsistent with law for the performance of its business, the Postmaster General may lawfully impose such a limitation. The act of Congress does not purport

> to grant an unlimited privilege as to sample copies, and its very generality and indefiniteness invites a supplementary regulation. It is not necessary to the validity of a departmental regulation that specific statutory authority for it be discovered. It would be impracticable to set forth in the statutes all the rules for the conduct of the business of the great executive departments of the Government, and Congress has wisely confined itself to marking general outlines and imposing general limitations, leaving the subordinate and supplemental details suggested by practical experience to be prescribed by the heads of the departments. A departmental regulation must not be inconsistent with the statutes, but it may be by way of execution or supplement.
>
> See also *Campbell* v. *U. S.*, 107 U. S. 407; *Haas* v. *Henkel*, 216 U. S. 462.

Another case in point, by analogy, is that of *United States* v. *The Antikamnia Chemical Company* (No. 118 of the present term), which involved the validity of a regulation requiring labels on drugs to state not only a "derivative" but the parent drug from which it was obtained. It was contended that this regulation added to the law because such law, section 8 of the act of June 30, 1906 (34 Stat. 768), merely required the label to show the parent substance *or* derivative, and not both as attempted to be required by the regulation.

This court said, inter alia:

> First, as to the power of the Secretaries. It is undoubtedly one of regulation only—an administrative power only—not a power to alter or add to the act. The extent of the power, however, must be determined by the purpose of the act and the difficulties its execution might encounter. * * *
>
> * * * * *
>
> The query then occurs, such being the words and purpose, if the quantity or proportion of the substances or any derivative or preparation of them must be stated, is it administrative of the law or additive to it to require by regulation that not only the name of the derivative or preparation be stated but from what substance derived or of what it is a preparation? It certainly can not be said that the purpose of the law is not exactly fulfilled by the regulation. If it fulfils the purpose of the law it can not be said to be an addition to the law, unless, indeed, it can be contended that the law provided a means for its defeat by the easy device of mysterious names. * * *

So in the case at bar, it can not be successfully contended that the regulation of the Postmaster General does not fulfil the purpose of the law. The regulation declares that stamps sold in large or unusual quantities to any person to be used in mailing matter at an office other than that at which the stamps were purchased, shall not be regarded as a part of the gross receipts of such latter office for the

purpose of fixing compensation. The regulation in this respect appears to follow substantially the prohibition in section 208 of the Criminal Code against selling or disposing of stamps outside the delivery of the office or *causing* these things to be done. But even if it could be shown that the regulation is broader than the statutory prohibition just mentioned, the regulation would nevertheless be valid because the closing sentence in section 208, *supra*, also prohibits the sale of stamps otherwise than as provided by the regulations of the Post Office Department, thus recognizing the right of the Postmaster General to restrict the sales of stamps.

The regulation also requires monthly reports of unusual sales, and this portion, which is separable from that above considered, is clearly valid, for the Postmaster General, under his broad powers over the supervision of the postal system, could lawfully make any regulation reasonably calculated to aid him in discovering unlawful or fraudulent sales. The disclosure of large and unusual sales would direct the attention of the department to specific sales that ought to be investigated for the purpose of determining the lawfulness and good faith of such sales. And where, in a case like that at bar, a postmaster fails to report a sale which the law clearly prohibits, and the revenues from such sale are used in part as the basis of fixing compensation, the United States is certainly defrauded.

## III.

**The indictment may be sustained without reference to the regulation of the Postmaster General.**

The court below construed the indictment as being predicated upon a violation of both the law and the regulation, so that a showing of a violation of either would seem to suffice (*Crain* v. *United States*, 162 U. S. 625, 636). This, however, raises a mere question of pleading which is not open on this writ of error. (*United States* v. *Stevenson*, 215 U. S. 190, 195.) We are therefore entitled to treat the indictment as charging a conspiracy to defraud by obtaining a compensation in excess of that authorized by law, thus eliminating all reference to the regulation. Viewed in this aspect, and for the reasons set forth under point *I* of this brief, it is submitted that the ruling of the court below was in error, and that the obtaining of compensation, based upon acts expressly prohibited by law, constitutes a defrauding of the United States, and this effect follows independently of any regulation upon the subject. (*United States* v. *Keitel*, 211 U. S. 370.)

A case in point is that of *United States* v. *Newton et al.* (48 Fed. 218 on demurrer), which was an indictment for conspiracy to defraud the United States by wrongfully increasing the weight of the mails during the so-called weighing period. The facts are thus stated by the court in its charge to the jury (52 Fed. 276, 277):

> * * * Briefly stated, the conspiracy so charged may be said to be that the defend-

ant, John C. Newton, entered into a conspiracy with Millard F. Oxford, and other persons to the grand jurors unknown, to defraud the United States; and that such defrauding was to be accomplished by, and had for its object, the unlawful and fraudulent procuring from the United States of money on the unlawful and fraudulent pretense and claim that under the statutes and arrangements then existing between the United States and the Des Moines & Kansas City Railway Company (of which company said Newton was at said date the vice gresident and general manager) said company was carrying over the post route extending over its line of road (which said line was a post route of the United States) an average daily weight of mail matter greatly in excess of the average mail matter actually carried over said post route; that the means to be used in carrying such conspiracy into effect was to load down the mails on said post route, during a period when the Government was weighing the mails carried thereon, with old and substantially valueless newspapers, which were during said weighing period to be mailed over said post route, but not mailed for any legitimate purpose, nor with any intent to use the said mails legitimately therefor, but with the unlawful and fraudulent intent thereby to create a fictitious and fraudulent average, on which the compensation to be paid by the United States to the said railway company for carrying the mail over said post route was to be based, and thus and thereby the Govern-

> ment be induced to pay out and should pay out for carrying said mails, and said railway company should thereby receive, an amount greatly in excess of the amount which in fact and of right, under the statutes with reference to carrying said mail would be paid by the Government, if, instead of such paying therefor on the basis of said fictitious and fraudulent average of mail matter carried, the payment therefor by the United States had been based on the average weight carried over said line of the legitimate mail matter—that is to say, the weight of mail matter other than said newspapers so mailed by the said Newton. * * *

Section 4002, Revised Statutes, provided that compensation should be based upon the "average rate of mails per day," to be ascertained by periodic weighings. No statute prohibited a carrier from taking advantage of such weighing periods to increase the average weight of the mails, by depositing in such mails large quantities of mailable matter which such carrier would not ordinarily do in the legitimate use of the mails. The indictment, however, was held to state a conspiracy to defraud the United States.

The case at bar presents a stronger case, for the sales which the conspirators made as a means of defrauding the United States were prohibited by law, viz, section 208 of the Criminal Code, while in the case just discussed the wrongful mailing of the matter was not prohibited by statute.

## IV.

### COUNT TWO.

The second count of the indictment charges a conspiracy to violate section 206 of the Criminal Code by making a false return for the purpose of increasing the compensation of the postmaster, one of the conspirators.

If, as pointed out by the court below, the postmaster was entitled to compensation based upon prohibited sales, then it may be conceded that the submission of a false report for the purpose of obtaining such compensation did not constitute a violation of law. It is clear, then, that this count of the indictment must stand or fall with count one.

## V.

It is respectfully submitted that the judgment below should be reversed with directions to overrule the demurrer to both counts of the indictment.

WILLIAM WALLACE, JR.,
*Assistant Attorney General.*

MARCH, 1914.

○

No. 882.

# In the Supreme Court of the United States.

OCTOBER TERM, 1918.

THE UNITED STATES, PLAINTIFF IN ERROR,

v.

HAROLD A. FOSTER, FRANK E. WINCHELL, WILLIAM S. HOWARTH, AND HARRY E. PLATT.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

REPLY BRIEF FOR THE UNITED STATES.

# In the Supreme Court of the United States.

OCTOBER TERM, 1913.

THE UNITED STATES, PLAINTIFF IN ERROR,
*v.*
HAROLD A. FOSTER, FRANK E. WINCHELL, William S. Edwards, and Harry H. Platt.
No. 838.

*IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.*

## REPLY BRIEF FOR THE UNITED STATES.

While defendants in their brief, under heading "Argument," point I, contend that this court has no jurisdiction, they seem to concede away their argument by stating at page 3 of their brief:

> *The lower court gave exactly the same meaning to section 37, and, for that matter, to section 208,* as the Government asserted was the correct one, and yet found no crime was alleged.

This admits that the court below construed sections 37 and 208. So also does the third and seventh ground, respectively, of each of the demurrers (R., 9, 10); while the court below (R., 11) in speaking of defendants' contentions on the demurrers, says:

"The principal contentions of the defendants are that *by statute* Foster was entitled to a salary based

upon 'gross receipts;' that 'gross receipts' *included* all sales usual or unusual," etc.

In further support of his contention that this court has no jurisdiction, he cites *United States* v. *Keitel* (211 U. S., 370, 378), and *United States* v. *Patten* (226 U. S., 525, 535). The Government's brief also relies on these cases, and rightly. It is sufficient in the case at bar that the court below construed section 37, the conspiracy statute, and that it did so is made plain by its judgment that the acts charged in the indictment did not constitute a conspiracy to defraud the United States. The following language from the decision in *United States* v. *Patten* (226 U.S., 525, 535) is pertinent here:

> At the outset we are confronted with the contention that the decision is not based upon a construction of the statute. But to this we can not assent. The court could not have decided, as it did, that the acts charged *are not within the condemnation of the statute without first ascertaining what it does condemn, which, of course, involved its construction.* Indeed, it seems a solecism to say that the decision that the acts charged are not within the statute is not based upon a construction of it.

Counsel (Brief, p. 3, foot) say: "The only question was whether there was power to make a regulation *limiting its scope*" (here referring to the words "gross receipts" of the statute).

Substitute the words "its scope" used by counsel for the words "the condemnation of the statute"

and the court's sentence, above quoted, would mean precisely the same thing.

Before you can say whether a regulation does or does not "limit the scope" of a statute, you must first decide just what the scope, i. e., meaning is.

And of course in determining whether section 37 covers the acts of the present defendants, it became necessary for the court below, as it will be for this court, to also construe the act of March 3, 1883 (22 Stat., 600), and sections 206 and 208 of the Criminal Code of the United States.

And this court in *Grand Trunk W. Ry.* v. *Lindsay* (No. 425, October term, 1913, decided April 6, 1914), decides that it is not necessary to refer eo nomine to a statute, before it may be said that the cause of action is founded on the statute. It is enough if sufficient facts are alleged to bring the case within its operation.

The contention that the Government is attempting to present the case in this court upon a theory different from that upon which it was presented below, appears to be without merit, for the court, in its opinion at page 13 of the record, says:

> The object of the conspiracy, as alleged in the *first* count of the indictment, was to defraud the United States by securing for Foster a larger salary than he was entitled to under said regulation. "The offence here charged is predicated both upon the *violation of the law* and of the regulations made by the Postmaster General in pursuance of them." (Brief of United States attorney.)

This is the court's reading of the Government's brief below. As that brief itself is not contained in this record, we must *accept* the reading.

Furthermore, with respect to the first count the court below also said (Rec., 12), referring to the act of 1883 and section 208, etc., that—

> Other statutes forbid postmasters from * * * soliciting business for their own offices, from selling outside their own districts, etc. (*Crim. Code, sec. 208.*)
>
> The *effect* of the *various statutes taken together* is to make the salaries depend upon the gross receipts and to prevent such receipts (and consequent salaries) from being increased by *improper methods*. The entire matter appears to be adequately covered by the statutes.

As to the second count, the court said (Rec., 14):

> The second count charges a conspiracy between the same defendants to commit "the offence denounced by section 206 of the Criminal Code." That section provides, inter alia, that whoever, being a postmaster, shall, for the purpose of fraudulently increasing his compensation, make a false return statement or account to any officer of the United States shall be punished.
>
> * * * * *
>
> The crime denounced by section 206 of the Criminal Code includes two essential elements: (1) that a return shall be made which was known to be false; and (2) that such false return shall have been made "for the purpose of

fraudulently increasing compensation." It is not criminal under said section to make a false return except for the purpose therein stated. From the allegations of the second count of the indictment it clearly appears that the purpose of the alleged false return was to secure for Foster only what he was, in accordance with the views hereinbefore expressed, legally entitled to receive. *The making of a false return for such a purpose was not a crime under said section, and the alleged conspiracy to do so was not a conspiracy to commit the offence denounced thereby.*

There seems to be no room for dispute that the court has jurisdiction of the present writ of error.

**POINT II OF DEFENDANTS' BRIEF.**

Their argument under this point needs no further reply beyond the statement that the postmaster, in view of section 208, did not have the *legal right* to make the sales set forth in the indictment. The Government's main b ief sufficiently deals with this.

They attempt, but not successfully, to distinguish *United States* v. *Newton et al.* (48 Fed., 218, and 52 Fed., 276), cited by the Government.

The contention that the regulations recognize the right of defendants to make the "unusual" sales set out in the indictment can not be supported. On the other hand, the very fact that the regulation declares that such sales shall not be included as part of the "gross receipts" in fixing compensation stands as a condemnation of such sales. Again, the require-

ment of reports of such sales, together with all the facts, seems to demonstrate the department's disapproval of such sales, and that in framing the regulation it had in mind the prohibitions of section 208. This statute prohibited such sales. The regulations furnished a ready means of directing attention to sales that might be prohibited and within the condemnation of the statute. With such a report an inspector could intelligently start an investigation. The procurement of the information was within the power of the department. (*U. S.* v. *Birdsall*, No. 727, Oct. term, 1913, decided Apr. 6, 1914.)

We take issue with counsel's statement (brief 4) that "the Government concedes (brief 22) that if the *regulation* was invalid the second count fails." We said, "If entitled to compensation based on *prohibited* sales," and the third division of our argument (brief 19–21) was to the point that the statute *itself* (sec. 208), *regardless* of the regulation, made such sales *illegal* and forbad including them as "gross receipts in fixing salaries."

POINT III OF DEFENDANTS' BRIEF.

The meat of their argument under this heading is that the Postmaster General has sought by his regulation "to change the method which Congress has clearly provided for fixing salaries" and to diminish such salary.

The cases cited by defendants, viz, *United States* v. *George* (228 U. S., 14), *United States* v. *Eaton* (144

U. S., 687), *Morrill* v. *Jones* (106 U. S., 466), and *Williamson* v. *United States* (207 U. S., 425), decided nothing more than that the power to make regulations requires that the exercise of that power, as said substantially in *Williamson* v. *United States*, *supra* (p. 462), shall be in aid of the enforcement of the statute and "not destructive of rights which Congress had conferred."

In the case at bar the regulations do nothing more than secure the payment of the exact compensation that, and no less than, Congress intended to pay postmasters. Under the statutes drawn in question, and dealing with compensation, there can be no such thing as "gross receipts" derived from *prohibited* acts. It is not to be presumed that the purpose of any *legislation* is to enable a person to derive a benefit from doing an *unlawful* act, or that it can be given such a construction.

The Government concedes that the Postmaster General possesses no right to "increase or diminish a salary fixed by statute." The regulation of the Postmaster General, here in issue, is not an attempted exercise of any such power; but rather to prevent, by insuring discovery of, any false showing of "the amount of business done at his office." (*U. S.* v. *Wilson*, 143 U. S., 28.)

Of the cases cited by defendants at bottom of page 6 of their brief, decided by the Court of Claims, none of them seems to aid their case.

**POINT IV OF DEFENDANTS' BRIEF.**

This point of defendants' brief is devoted to showing the limited, if any, application of section 208 to the case; that the postmaster is entitled to compensation for "solicited business" even though "the postmaster is prohibited from soliciting," and that the ruling in *Lewis Pub. Co.* v. *Wyman* (182 Fed., 13), and certain other cases cited in the Government's brief, are not pertinent.

With respect to the first point, it may be stated that while the indictment charges a conspiracy to defraud the United States by obtaining for the postmaster a salary in excess of that to which he was entitled under the law and regulations, one of the means adopted to accomplish that end, so it is charged in the indictment, was the sale of stamps brought about by "the connivance" of the postmaster. This would seem to be a sufficient charge of an "induced" sale mentioned in section 208. See page 3 of Record. Moreover, the indictment at this point we are considering (p. 3, Rec.) seems to clearly show that in framing it the pleader had the prohibitions of section 208 in mind. And if his allegations are sufficient to bring the case within reach of that statute, no direct reference is needed. (*Grand Trunk W. Ry.* v. *Lindsay*, supra.)

The claim that the postmaster is entitled to compensation for "solicited" business, even though the postmaster is *prohibited* by law from *soliciting*, and that "solicited" sales are not "unlawful" (brief 8),

is opposed to both the spirit and the letter of section 208. This seems to be sufficiently dealt with in the Government's main brief. But it may be added that upon such a view, as the offense denounced by section 206 is a felony, the act of "soliciting," if followed by a false return, would result (1) in furnishing a necessary increase of official salary; and (2) forever disqualifying him from holding any Federal office. There is something wrong with a contention that leads to such results.

With respect to the Lewis Publishing Co. case cited by the Government, it would seem that its pertinence to the case at bar is so clear as to obviate the necessity of discussing it further. The defendants' attempt to distinguish the case is abortive. The same criticism applies to their attempt on pages 9 and 10 of their brief to diminish the pertinency of certain other cases cited by the Government in its brief. Defendants' comment on these cases is not enlightening.

WILLIAM WALLACE, JR.,
*Assistant Attorney General.*

APRIL, 1914.

○

Office Supreme Court, U. S.
FILED
APR 8 1914
JAMES D. MAHER
CLERK

# Supreme Court of the United States.

**October Term, 1913.**

**No. 838.**

THE UNITED STATES,
PLAINTIFF IN ERROR,

V.

HAROLD A. FOSTER ET AL.

**In Error to the District Court of the United States for the District of Massachusetts.**

## Brief for Defendants in Error.

PHILIP RUBENSTEIN,
TIMOTHY HOWARD,
Attorneys for the Defendants.

ADDISON C. GETCHELL & SON, LAW PRINTERS, BOSTON, MASS.

# Supreme Court of the United States.

**October Term, 1913.**

---

**No. 838.**

THE UNITED STATES,
PLAINTIFF IN ERROR,
v.
HAROLD A. FOSTER ET AL.

---

## Brief for Defendants in Error.

---

STATEMENT.

This was an indictment in two counts, returned to the District Court of the United States for the District of Massachusetts on September 9, 1913. In the first count the defendants were charged with conspiring to defraud the United States by improperly increasing the gross receipts of Harold A. Foster, the postmaster at North Brookfield, thus enabling him to obtain a larger salary than he would ordinarily be entitled to receive. The second count charged the defendants with a conspiracy to commit an offense in violation of section 206 of the Acts of March 4, 1909, in that the postmaster at North Brookfield should make false returns to the First Assistant Postmaster General for the purpose of fraudulently increasing his salary.

The Postmaster General made a regulation to the effect that, in determining the gross receipts of a post-office for the purpose of fixing the postmaster's salary,

unusual sales of stamps should not be included, and that a statement of all such sales should be made monthly to the First Assistant Postmaster General. It was alleged in the indictment that the defendants conspired to act in violation of this regulation.

The defendants demurred to both counts and, after hearing, the Court sustained the demurrers to both counts. The cause is now in this Court on a writ of error brought by the United States from the decision of the District Court for the District of Massachusetts.

## Argument.

### I.

The defendants contend that this Court has no jurisdiction in these proceedings.

The so-called Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. L. 1246, gives this Court jurisdiction on a writ of error taken by the United States in criminal cases:

> "from a decision sustaining a demurrer to any indictment where such decision is based upon the invalidity or construction of the statute upon which the indictment is founded."

We contend that the first count of the indictment was based upon the General Fraud Statute, *i.e.*, sec. 37 of the Criminal Code, or sec. 5540, Rev. Sts. It was not based upon section 208 of the Criminal Code, and that section was not construed or interpreted by the Court.

So little was it intended to base the first count on section 208, that the original brief filed by the United States

attorney, did not contain any reference to it. In *United States* v. *George*, 228 U.S. 14, at page 19, the Court says:

> "To contend for one law as applicable in the trial court and another law in the appellate court would seem not only to be opposed to the requirement of the Statute but to be inconsistent with orderly procedure and to confound the relation of trial and appellate tribunals."

The lower Court gave exactly the same meaning to section 37, and, for that matter, to section 208, as the government asserted was the correct one, and yet found no crime was alleged. The reason was that the Court determined that the regulation of the Postmaster General, P.L. & R. 1907, sec. 255, par. 2, was beyond his power to enact under Revised Statutes, sec. 161, upon which alone he could claim the power.

The whole case resolved itself into the question of the power to enact the regulation. If this be a construction by the lower Court of Revised Statutes, sec. 161, it does not constitute a construction of the statute upon which the indictment is founded.

> *United States* v. *Keitel*, 211 U.S. 370, 378.
> *United States* v. *Patton*, 226 U.S. 525, 535, note, where cases are cited.

The words "gross receipts" were not interpreted. The only question was whether there was power in an administrative officer to make a regulation limiting its scope.

But assuming that the words "gross receipts" in the Act of March 3, 1883 (22 Stat. 600) were interpreted by

the lower Court, the indictment was not founded upon that statute.

This point of lack of jurisdiction applies also with reference to the second count of the indictment. That was based upon section 206 of the Criminal Code. The construction or interpretation of that statute was never in dispute. Whether it applied or not had to be determined by the validity of the regulation.

It is to be noted that the government, in its brief, abandons the first assignment of error, which appears on page 15 of the record, presumably because it is clear that the Court did not rule that the indictment did not well allege a conspirary under section 37 of the Criminal Code. There was no trouble with that section. The difficulty was with the regulation.

II.

If it is held that this Court has jurisdiction, then the real issue in the case is whether the lower Court was right in ruling that the Postmaster General had no power to pass the regulation. This is the purport of the various assignments of error. This issue goes to both counts of the indictment. The government concedes (Brief, p. 22) that if the regulation was invalid the second count falls, and we agree with the position taken by the government in its brief, "It is clear, then, that this [first] count of the indictment must stand or fall with count one" (Brief, p. 22).

We contend that the first count of the indictment cannot be sustained without reference to the regulation of the Postmaster General. The case of *United States* v. *Newton et al.*, 48 Fed. Rep. 218, 52 Fed. Rep. 276, 277, cited by the government, was a clear case of an attempt

to defraud the United States. The weights were padded with worthless stuff. In the principal case the postmaster had a legal right to make the unusual sales. The regulation recognizes that he did. It does not prohibit him from making the unusual sales. It merely requires him to report them after they have been made.

III.

*The defendants contend that the regulation is beyond the power of the Postmaster General to enact, and that accordingly it is invalid.*

The power of the Postmaster General is to "prescribe regulations not inconsistent with law for the governing of his department," etc. (Rev. Sts. sec. 161). We contend that the regulation in question *is* inconsistent with law; that in making the regulation the Postmaster General has attempted to legislate.

Postmasters are divided into four classes, those in the second class receiving salaries between $2000 and $3000.

> Section 5, Act of July 12, 1876 (2 U.S. Comp. Sts. 2609).

The salaries of second-class postmasters are fixed at $2000 per annum and are based upon gross receipts of $8000 and not exceeding $9000. These salaries are to be ascertained and fixed by the Postmaster General from the respective quarterly returns of the postmaster to the auditor of the treasury for the Post Office Department.

> Act of March 3, 1883 (2 U.S. Comp. Sts. 2619).

The salary of a second-class postmaster is dependent

upon the gross receipts of his office, in accordance with the returns to the auditor. The statute is very definite and clear on the subject.

The Postmaster General, by his regulation, proposes to base the salary of the postmaster upon gross receipts *less* unusual sales; in other words, upon something less than gross receipts. He has no right thus to change the method which Congress has clearly provided for fixing salaries.

> *United States* v. *George*, 228 U.S. 14.
> *United States* v. *Eaton*, 144 U.S. 687.
> *Morrill* v. *Jones*, 106 U.S. 466.
> *Williamson* v. *United States*, 207 U.S. 425.

This Court has definitely laid down the law that neither executive officers nor the appointing power can, during the service of an officer, either increase or diminish a salary fixed by statute.

> *Glavey* v. *United States*, 182 U.S. 595, 601.
> *United States* v. *Wilson*, 144 U.S. 24.

Many cases in that connection were decided in the Court of Claims.

> *Rush* v. *United States*, 35 C. Cls. R. 223.
> *Andrews* v. *United States*, 47 C. Cls. R. 51.
> *Adams* v. *United States*, 20 C. Cls. R. 115, 117.
> *Geddes* v. *United States*, 38 C. Cls. R. 428.
> *Whiting* v. *United States*, 35 C. Cls. R. 291.
> *Sherlock's Case*, 43 C. Cls. R. 161.
> *Jacobs* v. *United States*, 41 C. Cls. R. 452.

Other cases in which the validity of departmental regulations were considered are:

*In re Page*, 128 Fed. Rep. 317.
*Borden* v. *United States*, 132 Fed. Rep. 205.
*United States* v. *Symonds*, 120 U.S. 46.
*Patterson* v. *United States*, 181 Fed. Rep. 970.
*Bruhl* v. *Wilson*, 123 Fed. Rep. 957.
*Hoover* v. *Salling*, 110 Fed. Rep. 43.
*Bruce* v. *United States*, 202 Fed. Rep. 100.

Sometimes legislation provides for departmental regulations to care for details of administration of the particular legislation and in aid of it. The regulation in issue is not of that kind. It is the expression of the views of a particular administrative officer as to salaries to be paid to second-class postmasters. The regulation is not supplementary to the statute, but inconsistent with it.

If the regulation is invalid the conspiracy to do acts prohibited therein is not a conspiracy to defraud.

*United States* v. *Biggs*, 211 U.S. 507, 519, 521.
*Williamson* v. *United States*, 207 U.S. 425.

## IV.

*Cases Cited by the United States in its Brief.*

Obviously, the government now bases its position upon section 208 of the Criminal Code. In so far as it can be at all applicable here, that section prohibits postmasters from inducing, or attempting to induce, any person to purchase stamps for the purpose of increasing the com-

pensation of such postmaster. The government must, accordingly, contend that the first count charges a conspiracy between the postmaster and the other defendants by which the former should induce the latter to purchase stamps. The short answer is that the indictment does not allege any such conspiracy. It alleges a conspiracy to defraud the United States in a certain manner, *i.e.*, causing unusual sales to be made and then failing to report them in accordance with the requirements of the regulation. This was the interpretation of the lower Court and it is conclusive.

It does not follow that a violation of sect[illegible] 208 is a fraud upon the United States. A p[illegible]master who solicits sales is subject to the penalties of that section, but the sales are not thereby rendered unlawful. The regulation in question establishes our contention clearly. It recognizes that such sales are part of the gross receipts, and its quarrel with the postmaster arises only if he fails to report them. It cannot be contended successfully that section 208 is authority for the enactment of the regulation. The statute specifically gives the postmaster his salary, based upon gross receipts, and these include solicited business even though the postmaster is prohibited from soliciting.

It is not of much weight in this case that the regulation has been in force for a long time, for, as stated by the lower Court, subordinate officials would be very reluctant to attack the validity of a regulation made by a superior officer. The rule in *United States* v. *Johnston*, 124 U.S. 236, 253, applies to an entirely different class of cases. There it was sought to hold parties responsible who had acted in reliance upon departmental construction of law.

In the case of *Lewis Publishing Co.* v. *Wyman*, 182 Fed. Rep. 13, 16, cited by the government on page 13 of its brief, an important phase of the opinion is the following:

> "The act of Congress does not purport to grant an unlimited privilege as to sample copies and its very generality and indefiniteness invites a supplementary regulation."

There the question was as to the number of sample copies one could send "second class." It was further noted that under section 14 of the Acts of March 3, 1879, there was excluded from second-class matter publications designed principally for advertising. Accordingly, the regulation was, in any event, in aid of that statute by aiming to determine bona-fide sample copies, based on the number of bona-fide subscribers. The regulation aimed at distinguishing between advertising magazines and those devoted to literature.

The case of *McKee* v. *United States*, 164 U.S. 287, 293, has no application here. The well-known doctrine was there enunciated that in construing words used by the legislature the whole Act in which the words appear should be considered. The Court says:

> "But we think a perusal of the whole act prevents our giving this unlimited construction, because to do so would conflict with what we think was the intention of Congress gathered from the provisions of the whole act."

To the same effect are the cases of *Brewer* v. *Blougher* and *Petri* v. *Commercial National Bank of Chicago.*

The case of *State* v. *Illinois Cent. R. R. Co.* and others, cited on page 14 of the government's brief, are cases of taxation of corporations on their gross receipts or gross earnings, and the Courts went into the question of what items are not included in determining such receipts or premiums. It is difficult to see any applicability to the case at bar.

The case of *United States* v. *The Antikamnia Chemical Co.*, 231 U.S. 654, is not in point. There the statute specifically empowered departmental heads to enact regulations for the administration of the law. The law itself required that the label should state the quantity or proportion of the drug, or any derivative or preparation of the same.

It was held in that case that the regulation was in aid of the law, and it would seem to be clear that it is. Furthermore, it was held in that case that the law did not need the assistance of the regulation. It should also be noted that that was not a criminal case. That was a case, however, where Congress expressly authorized the Executive Department to make rules to carry out specific provisions of this particular Act.

V.

We respectfully contend that the judgment below should be sustained.

PHILIP RUBENSTEIN,
TIMOTHY HOWARD,
Attorneys for the Defendants.